

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: EAST PLAINS TELECOM, INC., BALTIC TELECOM COOPERATIVE, INC., AND ALLIANCE COMMUNICATIONS COOPERATIVE, INC., f/k/a SPLITROCK TELECOM COOPERATIVE, INC.	DOCKET NOS. TCU-02-13 TF-02-512 WRU-02-40-3095
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**ORDER APPROVING APPLICATION, APPROVING TARIFF,
GRANTING WAIVER, AND TRANSFERRING CERTIFICATE**

(Issued October 22, 2002)

On September 11, 2002, East Plains Telecom, Inc. (East Plains), Baltic Telecom Cooperative, Inc. (Baltic), and Alliance Communications Cooperative, Inc., f/k/a Splitrock Telecom Cooperative, Inc. (Alliance), filed with the Utilities Board (Board) a joint request for a transfer of East Plains' certificate of public convenience and necessity to Alliance. Additional information supporting the request was filed on October 9, 2002. The filing and supplemental information has been identified as Docket No. TCU-02-13.

East Plains currently provides local telephone service to Iowa customers served by the Hudson, South Dakota, exchange pursuant to Certificate No. 0173, previously issued on July 18, 1997. On January 1, 2003, at 12:01 a.m., East Plains will merge with Baltic. Also on January 1, 2003, at 12:02 a.m., the newly merged

Baltic will be merged with Alliance. Alliance will be the surviving entity. After the transfer, Alliance will provide all of the services previously provided by East Plains.

Iowa Code § 476.29(3) authorizes the transfer of a certificate upon approval by the Board. Since Alliance will be the provider of local exchange service in Iowa upon approval of the transfer, the Board will consider the transfer under the same conditions as it would an application for a certificate. Alliance has provided the information necessary for that consideration and has filed a proposed tariff with the terms, conditions, and rates for providing local exchange service. The tariff has been identified as Docket No. TF-02-512.

Alliance has stated that it will provide 2-PIC dialing parity and that it will concur in the service area of East Plains. Alliance has also requested waivers of Board rules 199 IAC 16.5(2), 18.2, 22.3(1), and 22.23(2). The waiver request has been identified as Docket No. WRU-02-40-3095.

Iowa Code § 476.29(2) provides that a local exchange carrier shall not be denied a certificate if the Board finds that the applicant "possesses the technical, financial, and managerial ability to provide the service it proposes to render and the Board finds the service is consistent with public interest."

The Board has reviewed Alliance's information and finds the necessary technical, financial, and managerial ability to provide local exchange service has been demonstrated. The Board finds it is in the public interest to approve Alliance's application and approve the transfer of East Plains' certificate of public convenience and necessity to Alliance.

Alliance requested a waiver of 199 IAC 16.5(2), stating it employs an accounting system in accordance with generally accepted accounting principles (GAAP) rather than the system prescribed by the subrule. The Board finds this waiver should be granted since records kept in accordance with GAAP are acceptable for a competitive local exchange service provider.

Alliance has requested that the requirements of 199 IAC 18.2 be waived. The rule requires that a regulated public utility keep its records in Iowa. The Board will grant the waiver based upon the statement of Alliance that it will make the records available to the Board upon request.

Alliance requested the Board waive 199 IAC 22.3(1), requiring it to independently publish a directory. The Board will grant this waiver since Alliance has stated it will make its customer listing available to the publishers of directories in its service area to be included in the local directories.

Alliance has also requested a waiver of 199 IAC 22.23(2) to allow the transfer of the customer base of East Plains to Alliance without first obtaining each customer's authorization and verification. The subrule requires individual customer verification to change the customer's local or long distance provider.

Alliance states that it intends to give proper notice of the transfer to all affected customers prior to the transfer and that affected customers will be notified that there will be no change in the rates, terms, and conditions of services provided to East Plains' customers.

Rule 199 IAC 1.3 states that the Board may grant a waiver if it finds, based upon clear and convincing evidence, that the application of the rule would pose an undue hardship, the waiver would not prejudice the substantial legal rights of any person, the provisions waived are not specifically mandated by statute, and substantially equal protection of public health, safety, and welfare will be afforded after the waiver. The Board has considered the waiver requests described above and finds that the waivers meet the four criteria of the rule and the evidence in support of the waivers is clear and convincing.

The Board finds that adherence to Board rules 199 IAC 16.5(2), 18.2, and 22.3(1) would be an undue hardship on a competitive local exchange carrier beginning to do business in Iowa. It would be an undue hardship for Alliance to publish a directory for its Iowa customers, keep a separate set of accounts, or to maintain separate records within Iowa. The Board finds there are no substantial legal rights of any person that are affected by these waivers and there is no statute that specifically mandates the action waived. Additionally, the Board finds that there will be substantially equal protection for the public health, safety, and welfare, since the actions waived will be completed under different circumstances.

The Board finds the request to waive 199 IAC 22.23(2) should also be granted as it complies with the requirements of 199 IAC 1.3. The Board finds that it would be an unnecessary hardship for Alliance to obtain individual authorization verifications for a change in service providers resulting from corporate merger, so long as all affected customers will have been given adequate notice of the change. The Board

also finds that the waiver will not affect the substantial legal rights of any person and that equal protection of the public health, safety, and welfare have been afforded since all of East Plains' customers will receive notice of the change and the rates, terms, and conditions of their service will not be changed.

The Board finds that the verification requirement is not specifically mandated by statute or other provision of law under the circumstances presented. Iowa Code § 476.103 (2001) gives the Board the authority to promulgate rules "to protect consumers from unauthorized changes in telecommunications service." Subrule 199 IAC 22.23(2) implements the statutory prohibition against unauthorized transfers. The rule is designed to prevent fraudulent transfers of customers. Where the transfer is part of a corporate restructuring, adequate notice is given, and there is no change in rates, terms, or conditions, of service, the Board finds that statutory verification is not required.

Alliance has filed a proposed tariff, Docket No. TF-02-512, to provide local exchange service. The Board has reviewed the tariff and finds that it substantially complies with the Board's rules on filing and processing of tariff pages. Since the Board has approved Alliance's tariff, the Board will approve the transfer of Certificate No. 0173 to Alliance. An amended Certificate No. 0173 will be issued concurrently with this order.

IT IS THEREFORE ORDERED:

1. The joint request for the transfer of the certificate of public convenience and necessity from East Plains Telecom, Inc., to Alliance Communications

Cooperatives, Inc., f/k/a Splitrock Telecom Cooperative, Inc., filed on September 11, 2002, is approved as described in this order.

2. The proposed local exchange service tariff filed by Alliance Communications Cooperatives, Inc., f/k/a Splitrock Telecom Cooperative, Inc., and identified as TF-02-512, is approved.

3. The waiver of 199 IAC 16.5(2), 199 IAC 18.2, 199 IAC 22.3(1), and 199 IAC 22.23(2) is granted as described in this order.

4. An amended Certificate No. 0173 is issued to Alliance Communications Cooperatives, Inc., f/k/a Splitrock Telecom Cooperative, Inc., concurrently with this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 22nd day of October, 2002.